

1 MICHAEL C. DAVIS,

2 No. CV 12-03976

3 Plaintiff,

4 v.

5 AMTRAK,

6 Defendant.

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8 **ORDER DENYING DEFENDANT'S  
MOTION TO DISMISS OR MOTION  
FOR A MORE DEFINITE STATEMENT**9  
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13 Defendant National Railroad Passenger Corp. ("Amtrak")<sup>1</sup> has filed a motion to dismiss *pro se*  
14 plaintiff's amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state  
15 a claim, or alternatively, for a more definite statement under Federal Rule of Civil Procedure 12(e).  
16 Plaintiff has filed various documents in response, see Docket Nos. 26, 29, 30, and Amtrak has filed a  
17 reply. The Court held a hearing on Amtrak's motion on June 21, 2013, at which plaintiff was present  
18 and defendant's counsel appeared by telephone. Having considered the parties' arguments, the Court  
19 DENIES defendant's motion to dismiss or for a more definite statement, for the reasons discussed  
20 below.  
2122 **DISCUSSION**23 **1. Motion to Dismiss for Failure to State a Claim**24 Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint if it  
25 fails to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion to dismiss,  
26 the plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl.*  
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<sup>1</sup> Erroneously sued as "Amtrack," the National Railroad Passenger Corp. is a federally chartered corporation of which the United States owns more than 50 percent of the capital stock, and therefore the court has original jurisdiction. 28 U.S.C. § 1349; *Rodriguez v. County of Stanislaus*, 2008 WL 4765110, \*8 (E.D. Cal. 2008).

1 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This “facial plausibility” standard requires the plaintiff  
2 to allege facts that add up to “more than a sheer possibility that a defendant has acted unlawfully.”  
3 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). While courts do not require “heightened fact pleading of  
4 specifics,” a plaintiff must allege facts sufficient to “raise a right to relief above the speculative level.”  
5 *Twombly*, 550 U.S. at 544, 555.

6 In deciding whether the plaintiff has stated a claim upon which relief can be granted, the court  
7 must assume that the plaintiff’s allegations are true and must draw all reasonable inferences in the  
8 plaintiff’s favor. *See Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). However, the  
9 court is not required to accept as true “allegations that are merely conclusory, unwarranted deductions  
10 of fact, or unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008).

11 Taking all of plaintiff’s filings together, it is apparent that plaintiff purchased a ticket from  
12 Amtrak to travel from Tacoma, Washington, to Emeryville, California on June 28, 2012. *See* Docket  
13 No. 26. Plaintiff alleges that he checked his luggage in Tacoma, traveled to Emeryville, and upon  
14 arrival in Emeryville, he went to claim his luggage only to find that “it wasn’t there.” Amend. Compl.  
15 (Docket No. 14). Plaintiff alleges that he showed an Amtrak employee his claim check and inquired  
16 about his luggage in person on the day he arrived, and the following day. *Id.* He also alleges that he  
17 filed a claim with Amtrak to locate his luggage. *Id.* He attached a partly illegible “Baggage and Express  
18 Tracing” form, which notes that a claim for his lost luggage was sent to “CCSC” on July 5, 2012, within  
19 a week of his initial travel. *Id.* Plaintiff further alleges that the loss of his luggage caused him enormous  
20 hardship because it contained three months of medications for his high blood pressure, arthritis, and  
21 seizure condition, in addition to other items. Plaintiff seeks compensatory and punitive damages against  
22 Amtrak.

23 Defendant contends that plaintiff’s complaint should be dismissed because it lacks “any factual  
24 basis for how Amtrak lost his luggage” or any allegations as to why he believes Amtrak lost it “as  
25 opposed to a non-Amtrak employee stealing it.” Mot. at 3. Defendant further alleges that plaintiff fails  
26 to identify “what legal duty Amtrak owed to plaintiff to prevent his luggage from being lost or stolen,  
27 and how such a duty was breached.” *Id.*

28 The Court disagrees. *Pro se* pleadings must be liberally construed. *See Balistreri v. Pacifica*

1 *Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). Here, it appears from plaintiff's filings that his main  
2 allegation is that Amtrak negligently lost his luggage.<sup>2</sup> Under California law, the elements of a cause  
3 of action for negligence are (1) a legal duty to use reasonable care, (2) breach of that duty, and (3)  
4 proximate [or legal] cause between the breach and (4) the plaintiff's injury. *Mendoza v. City of Los*  
5 *Angeles*, 66 Cal.App.4th 1333, 1339 (1998) (citation omitted). Plaintiff alleges that he checked his  
6 luggage with Amtrak as part of his trip, presumably giving rise to a duty on Amtrak's part not to lose  
7 that luggage. Plaintiff further alleges that Amtrak breached that duty, that he was harmed by that  
8 breach, and that he has not been compensated.

9 Alternatively, plaintiff's allegations may also be understood to allege a breach of contract.  
10 Under California law, to state a cause of action for breach of contract a plaintiff must plead: "the  
11 contract, plaintiffs' performance (or excuse for nonperformance), defendant's breach, and damage to  
12 plaintiff therefrom." *Gautier v. General Tel. Co.*, 234 Cal. App. 2d 302, 305 (1965). Here, plaintiff has  
13 attached his boarding pass (Docket No. 26) and a claim form, presumably to evidence the existence of  
14 an agreement between he and Amtrak to transport his luggage. Plaintiff alleges that Amtrak failed to  
15 keep its end of the bargain and as a result, he suffered greatly due to the loss of medications and other  
16 items.

17 Accordingly, the Court DENIES defendant's motion to dismiss plaintiff's complaint because the  
18 Court finds that plaintiff has sufficiently alleged negligence and/or breach of contract.

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20 **2. Motion for a More Definite Statement**

21 Federal Rule of Civil Procedure 12(e) provides that a party may move for a more definite  
22 statement of a pleading this is "so vague or ambiguous that the party cannot reasonably prepare a  
23 response." A Rule 12(e) motion should be considered in light of the liberal pleading standards of Rule  
24 8(a). *See Bureerong v. Uvawas*, 922 F. Supp. 1450, 1461 (C.D. Cal. 1996) (*citing Sagan v. Apple*  
25 *Computer, Inc.*, 874 F. Supp. 1072, 1077 (C.D. Cal. 1994) ("Motions for a more definite statement are

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27 <sup>2</sup> Federal district courts have federal question jurisdiction over state law claims in which Amtrak  
28 is a defendant. *See Hollus v. Amtrak Northeast Corridor*, 937 F. Supp. 1110, 1114 (D.N.J. 1996). In  
addition, at the June 21, 2013 hearing Amtrak's counsel informed the Court that it was not aware of any  
federal law or statute that would prohibit such a lawsuit against Amtrak.

1 viewed with disfavor and are rarely granted because of the minimal pleading requirements of the Federal  
2 Rules.”)).

3 A Rule 12(e) motion should be granted when the complaint is so vague that the defendant cannot  
4 discern the nature of the plaintiff's claims and thus cannot frame a response. *See Famolare, Inc. v.*  
5 *Edison Bros. Stores, Inc.*, 525 F. Supp. 940, 949 (E.D. Cal. 1981); *Boxall v. Sequoia Union High Sch.*  
6 *Dist.*, 464 F. Supp. 1104, 1114 (N.D. Cal. 1979). If the complaint notifies the defendant of the substance  
7 of the plaintiff's claim, a 12(e) motion should not be granted. *San Bernardino Pub. Employees Ass'n*  
8 *v. Stout*, 946 F. Supp. 790, 804 (C.D. Cal. 1996) (“A motion for a more definite statement is used to  
9 attack unintelligibility, not mere lack of detail, and a complaint is sufficient if it is specific enough to  
10 apprise the defendant of the substance of the claim asserted against him or her.”). A 12(e) motion  
11 should also be denied if the detail sought is obtainable through discovery. *Davison v. Santa Barbara*  
12 *High Sch. Dist.*, 48 F. Supp. 2d 1225, 1228 (C.D. Cal. 1998).

13 Defendant contends that plaintiff's complaint is too bare to enable defendant to fully and  
14 properly respond. The Court again disagrees. As discussed, plaintiff's filings provide Amtrak with  
15 sufficient notice of the substance of plaintiff's claim or claims – that Amtrak may be liable in tort or  
16 contract for breaching its duty to transport plaintiff's luggage. Accordingly, the Court DENIES  
17 defendant's motion for a more definite statement.

## 19 CONCLUSION

20 For the foregoing reasons, the Court hereby DENIES defendant's motion to dismiss for failure  
21 to state a claim and DENIES defendant's motion for a more definite statement. Defendant shall respond  
22 to plaintiff's complaint within 10 days of this Order. Defendant's counsel is also ordered to appear  
23 in person at the July 12, 2013 status conference. This Order resolves Docket Nos. 22, 26, 29,<sup>3</sup> and 30.

## 24 IT IS SO ORDERED.

25 Dated: June 21, 2013



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SUSAN ILLSTON  
United States District Judge

<sup>3</sup> There Court DENIES plaintiff's request for Court-appointed counsel.